

January 12, 2004

TO: Protection and Safety Workers and Supervisors
Protection and Safety Administrators

FROM: Allen Jensen, Administrator
Office of Protection and Safety

RE: Administrative Discharge of HHS-OJS Wards Who Are Direct Commitments

Effective Date: Immediately

In the past, HHS has acted on the premise that it (rather than the Court) had authority to terminate the Department's involvement with an HHS-OJS ward. The NE Supreme Court recently issued a decision (*In re Interest of Tamantha S.*, 267 Neb. 78) stating that such authority rests with the Court. Although the written decision does not distinguish between different types of commitments, the Department's interpretation is that it applies only to direct commitments.

Based on the Supreme Court decision, the Department's practice regarding direct commitments is amended as follows. Upon recommendation of the Juvenile Services Officer and approval by the Service Area's designated person, a letter will be sent to the Court, stating that the Department requests the Court's approval of discharge from HHS-OJS custody, and the reasons why the request is made. Copies of the letter also must be sent to attorneys of record. The Department will consider the youth to be in HHS-OJS custody until a discharge order is received from the Court.

The Department will continue its current discharge practices for youth who are committed to YRTC-G or YRTC-K.

The process to revise 390NAC 5-006.03 to reflect this modification in practice is underway. If you have questions, please contact the Protection and Safety Legal Team, or Margaret Bitz in Protection and Safety, Central Office.